

SPARKS & CRAIG, L

ATTORNEYS AT LAW

SUITE 360
6862 ELM STREET
MCLEAN, VIRGINIA 22101
TELEPHONE 703-848-4700
FACSIMILE 703-893-7371

WWW.SPARKSCRAIG.COM

ROBERT R. SPARKS, JR.
CHRISTOPHER T. CRAIG

WRITER'S EMAIL ADDRESS:
rrspark@sparkscraig.com

August 4, 2005

Lawrence Norton, Esquire
General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

RECEIVED
FEDERAL ELECTION
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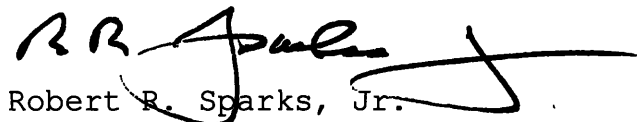
Re: In the Matter of Mail
Fund, Inc.; MUR 5635

Dear Mr. Norton:

I enclose the Brief of Mail Fund, Inc. in
response to the General Counsel's Brief in the referenced
matter.

Please feel free to contact me if you have any
questions.

Sincerely,


Robert R. Sparks, Jr.

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Enclosures

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of Mail Fund, Inc.

MUR 5635

**BRIEF OF MAIL FUND, INC.
IN RESPONSE TO GENERAL COUNSEL'S BRIEF**

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Introduction

On July 25, 2005, the General Counsel issued its Brief in this matter, urging the Commission to find that Mail Fund, Inc. (MFI) had violated 2 U.S.C. § 441b(a) by making prohibited corporate contributions to a political committee.

By letter dated July 27, 2005, counsel for MFI asked for an additional twenty (20) days to respond to the Brief, noting that MFI's president, James Flemma, was ill

Consequently, we argued, we would need additional time to prepare MFI's response to the General Counsel's Brief in this matter. On the same day, having already sent the letter requesting an extension of time, counsel for MFI learned that Mr. Flemma had died on July 25, the same date that the General Counsel's Brief was signed.

On July 28 or 29, in response to our July 27 letter, an attorney representing the FEC called the undersigned counsel to acknowledge receipt of the letter and to say that the requested additional time would likely be granted, provided that MFI agreed to a tolling of the applicable statute of limitations during the requested extension period. We informed the attorney representing the FEC that Mr. Flemma had died and that MFI was effectively out of business. FEC counsel agreed to talk to his superiors about the FEC's position in this matter in view of Mr. Flemma's death.

On August 2, the same attorney from the FEC again called the undersigned counsel and reiterated that it was the FEC's position that the General Counsel would not grant an extension of time to respond to the General Counsel's Brief unless MFI agreed to a tolling of the applicable statute of limitations during that period. We refused that condition, and we therefore respond below to the General Counsel's Brief.

**SPARKS &
CRAIG, LLP**

SUITE 360
862 ELM STREET
CLEAN, VA 22101
T 703-848-4700
F 703-893-7371

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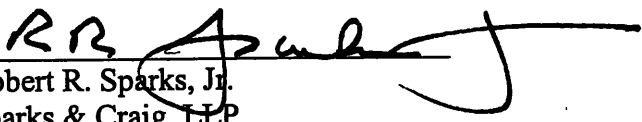
Argument

MFI's sole business was providing postage and related loans to entities engaged in direct mail fundraising. In early 2005, when Mr. Flemma learned that he was terminally ill he closed down the business of MFI and made no further loans. Since then, MFI's only business has been to collect whatever amounts it was owed.¹ As a practical matter, therefore, there is little or no point in proceeding further in this matter to a finding of probable cause, as recommended by the General Counsel's Brief.

Nonetheless, in response to the General Counsel's Brief, MFI relies on the arguments set out in its January 26 and February 8, 2005 letters to Ms. Mizuno, copies of which are attached. In addition, MFI contends that as a matter of law the Commission may not bottom a finding of probable cause in this case on MURs, particularly in the face of an apparently contrary Advisory Opinion (AO 1979-36) and regulation (11 C.F.R. § 116.3).²

As a matter of policy, too, the Commission should not decide this matter on MURs, which do not have the force of law granted to Advisory Opinions and regulations. If the Commission believes that the transactions at issue in this MUR should be forbidden, then they should forbid them prospectively, by regulation. The Commission should not create what is arguably new law, or try to reconcile conflicts between and among AOs, MURs and regulations, by means of an MUR.

Respectfully submitted,


Robert R. Sparks, Jr.
Sparks & Craig, LLP
6862 Elm Street, Suite 360
McLean, Virginia 22101
(703) 848-4700
Counsel for Mail Fund, Inc.

Date: August 4 2005

¹ We have not been in contact with Mr. Flemma's widow to learn the particulars of MFI and its business operations in the last few months.

² The General Counsel's Brief does not even mention, let alone try to distinguish or explain away, AO 1979-36 or 11 C.F.R. § 116.3.